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DUBOIS, BRYANT, CAMPBELL & SCHWARTZ, LLP
700 LAVACA STREET
SUITE 1300
AUSTIN, TX 78701

EXAMINER
BUTLER, PATRICK NEAL

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/757,828
Filing Date: January 15, 2004
Appellant(s): PARISH, BART P.

William D. Wiese
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 21 September 2010 appealing from the Office action mailed 08 March 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 2, 3, 7-21, 30-32, and 34-53

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,017,475	Cantrell	01-2000
3,547,577	Lovercheck	12-1970
5,342,418	Jesse	08-1994
4,789,507	Wesley et al.	12-1988

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Double Patenting

Applicant is advised that should claims 2, 3, 7-21, 30-32 be found allowable, claims 34-53 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 3, 7, 8, 12, 13, 17, 18, 34-37, 41, 42, 46, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cantrell (US Patent No. 6,017,475) in view of Lovercheck et al. (US Patent No. 3,547,577).

With respect to Claims 2 and 34, Cantrell teaches a method of making a product using a combined combustible material of household garbage including plastic bottles and paper (method of making combustible products from recyclable materials; feedstock is … thermoplastic material, cellulosic fiber) (see col. 1, lines 14-15; col. 5, lines 1-7; col. 11, line 64 through col. 12, line 4). As the household garbage contains materials that have been brought together in the production of the garbage, it is therefore already, to some degree, a blended material (blending feedstock). Cantrell teaches reducing particle size by using a grinder (inputting said blended feedstock into a grinder for the purpose of reducing the size of said blended feedstock) (see col. 9, lines 9-15; col. 11, line 64 through col. 12, line 4), squeezing the shards, applying high pressure, and extruding the material into bricks, blocks, or fire logs (compressing and extruding said reduced blended feedstock through a cuber so as to create combustible products) (see col. 9, lines 54-57; col. 10, lines 17-25 and 35-46; col. 11, lines 20-27). In extruding, the location on the apparatus that the material is extruded from would be the die hole used to form combustible products. Moreover, as the expeller and extruder would constitute at least two dies, there would be at least two die holes. It is noted on

page 9, lines 5-9, within paragraph [0023], of Applicant's specification that Applicant defines cuber to encompass an apparatus that makes items of a variety of shapes:

> The term "cube" refers to a discrete product of any size or shape that contains both cellulosic material and thermoplastic material. The cube need not be square or even symmetrical. While it may be useful to form the products in the shape of cubes, they can be any suitable symmetrical configuration such as the shape of a tube or a sphere.

This limitation is taught by Cantrell's bricks, blocks, and fire logs. With respect to the limitation "consists essentially," the limitation is interpreted as "consisting essentially." The overall claim language remains open with the limitation "comprising." Therefore, additional materials may be added, which may be considered additional process steps which would not be effected by the limitation "consists essentially," and the limitation is met are at least by the plastic bottle article (see col. 1, lines 14-15; col. 5, lines 1-7; col. 11, line 64 through col. 12, line 4).

Cantrell does not expressly teach monitoring the temperature of the combustible products for purposes of fire prevention.

Lovercheck teaches forming briquettes 36 and maintaining them at 130 °F to sterilize the material (see col. 2, lines 48-57), which is interpreted as meaning the temperature of the combustible products is monitored to some degree since the temperature is maintained (teach monitoring the temperature of the combustible products for purposes of fire prevention).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to heat the cubes of Cantrell as taught by Lovercheck in order to provide a sterilized product of garbage (see Lovercheck, col. 1, lines 33-47).

With respect to Claims 2, 7, 12, 17, 34, 36, 41, and 46, Cantrell does not appear to explicitly teach that the grinder operating torque is within the claimed range (e.g., between about 18,000 and 20,000 ft-lbs of torque per motor shaft). However, in this regard, Cantrell further teaches that the grinder operates at a rated velocity depending upon the configuration of the machine used and that it rotates so that the work piece is ground to the desired shape, size, and finish (see col. 9, lines 27-35). Cantrell's teaching of optimizing the rated velocity and position, by definition, would be an optimization of the rotational force or torque via optimization of its components. Given that the velocity and material is ground properly, the torque would be a function of these variables. As such, Cantrell obvious recognizes that the grinder operating torque is a result-effective variable. Since the grinder operating torque would be a result-effective variable, one of ordinary skill in the art would have obviously determined the optimum grinder operating torque applied in the process of Cantrell through routine experimentation based upon rated velocity and grinding to the desired shape, size, and finish (see col. 9, lines 27-35).

With respect to Claims 3, 8, 13, 18, 35, 37, 42, and 47, Cantrell does not appear to explicitly teach that the grinder operating speed is within the claimed range (e.g., between about 75 to about 80 rpm). However, in this regard, Cantrell further teaches that the grinder operates at a rated velocity depending upon the configuration of the

machine used and that it rotates so that the work piece is ground to the desired shape, size, and finish (see 9, lines 27-35). As such, Cantrell obvious recognizes that the grinder operating speed is a result-effective variable. Since the grinder operating speed would be a result-effective variable, one of ordinary skill in the art would have obviously determined the optimum grinder operating speed applied in the process of Cantrell through routine experimentation based upon rated velocity and grinding to the desired shape, size, and finish (see col. 9, lines 27-35).

Claims 9-11, 14-16, 19-21, 38-40, 43-45, and 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cantrell (US Patent No. 6,017,475) in view of Lovercheck et al. (US Patent No. 3,547,577) as applied to claims 2, 7, 12, 17, 34, 36, 41, and 46 above, and further in view of Jesse (US Patent No. 5,342,418).

With respect to Claims 9, 14, 19, 38, 43, and 48, Cantrell teaches making combustible products from recyclable materials as previously described. Cantrell teaches using combustible rubbish (see col. 1, lines 13-16 and 25-31) including plastic bottles (see col. 5, lines 1-7).

Cantrell does not appear to expressly teach polyethylene, polypropylene, and polybutylene as components of the combustible rubbish.

Jesse teaches that polyethylene, polypropylene, and polybutylene (thermoplastic material is selected from the group consisting of polyethylene, polypropylene … polybutylene) are elements of combustion obtained from disposable diapers (recyclable materials) (see col. 7, lines 22-40 and 49-61).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the polymers in disposable diapers as taught by Jesse in the process of making combustible products as taught by Cantrell because Cantrell requires combustible rubbish and Jesse teaches combustible disposable material. Moreover, Jesse teaches that the material is well known to be recycled to make combustible products (see col. 7, lines 22-40 and 49-61).

With respect to Claims 10, 11, 15, 16, 20, 21, 39, 40, 44, 45, 49, and 50 it is noted that there is no positively claimed step of producing disposable diapers, sanitary pads, adhesive liners, and hospital gowns. Thus, any materials in disposable diapers, sanitary pads, adhesive liners, and hospital gowns would be materially identical to byproducts and waste of production. Jesse teaches using disposable diapers and sanitary pads (hygiene pads) (see col. 7, lines 49-61).

Claims 30-32 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cantrell (US Patent No. 6,017,475) in view of Lovercheck et al. (US Patent No. 3,547,577) as applied to Claim 2 and 34 above, and further in view of Wesley et al. (US Patent No. 4,789,507).

Cantrell in view of Lovercheck teaches a method of making combustible products as previously described with respect to claim 34.

With respect to Claims 30, 31, 51, and 52, Cantrell teaches optimization of grinder operating torque as described above.

Cantrell does not expressly teach monitoring the operational characteristics of said grinder and cuber using a software application. It is noted that there is no claimed step of controlling, regardless of any data "monitor[ed]." Therefore, any mentioning of any process monitoring involving 1) software and 2) a grinder or extruder (cuber) would meet the limitations of the claim since any parameter could be used to control the process regardless of whether or not specific controlling is taught.

Wesley teaches that when using an extruder, the speed of the extruder (cuber; speed of the cuber) is monitored as well as the pump outlet pressure (cuber; the pressure required to perform the cubing operation) (see col. 8, lines 41-56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Wesley's monitoring with Cantrell's process of making combustible products in order to form a feedback control of the process as well as to control the rate of flow into the extruder (cuber) (see col. 8, lines 41-56).

With respect to Claims 33 and 53, Cantrell does not appear to explicitly teach that the grinder operating speed is within the claimed range (e.g., between about 75 to about 80 rpm). However, in this regard, Cantrell further teaches that the grinder operates at a rated velocity depending upon the configuration of the machine used and that it rotates so that the work piece is ground to the desired shape, size, and finish (see 9, lines 27-35). As such, Cantrell obvious recognizes that the grinder operating speed is a result-effective variable. Since the grinder operating speed would be a result-effective variable, one of ordinary skill in the art would have obviously determined the optimum grinder operating speed applied in the process of Cantrell through routine

experimentation based upon rated velocity and grinding to the desired shape, size, and finish.

(10) Response to Argument

In Appellant's Arguments, section I A, pages 8 and 9, Appellant argues that Cantrell does not teach a feedstock consisting essentially of thermoplastic material, cellulosic fibers, or combinations thereof because Cantrell's feedstock is combined with rubbish. With respect to the limitation "consists essentially," the Examiner interprets the limitation as "consisting essentially." The overall claim language remains open with the limitation "comprising." Therefore, additional materials may be added, which may be considered additional process steps which would not be effected by the limitation "consists essentially," and the Examiner relies upon the limitation being met at least by the plastic bottle article (thermoplastic material) (see col. 1, lines 14-15; col. 5, lines 1-7; col. 11, line 64 through col. 12, line 4). Moreover, to the extent that the limitation "consists essentially" limits Cantrell's additional material, Appellant's arguments are not persuasive because the additional material taught by Cantrell does not appear to detract from the basic and novel characteristics of the claimed invention (see MPEP § 2111.03). Specifically, Cantrell's feedstock is sufficient to make combustible products such as fire logs out of combustible feedstock material (see col. 1, lines 14-15; col. 9, .lines 35-46; and col. 13, lines 6-21), and Appellant does not appear to allege that these materials detract from the basic and novel characteristics of the claimed invention.

In Appellant's Arguments, section I B, pages 9-12, Appellant argues that Cantrell does not teach a feedstock consisting essentially of thermoplastic material, cellulosic

fibers, or combinations thereof because Cantrell's feedstock includes water. Appellant further argues against a position that no water is required in the process taught by Cantrell. Regarding the limitations of meeting the limitation of "consists essentially," the Examiner relies upon the discussion above in response to Appellant's Arguments, section I A, pages 8 and 9, regarding the interpretation of "consists essentially," Cantrell's teaching of thermoplastic material in the feedstock, and Cantrell's additional material not detracting from the basic and novel characteristics of the claimed invention. Moreover, in response to Appellant's water in Cantrell's process, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., feedstock containing no water) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In Appellant's Arguments, section II, pages 12-14, Appellant argues that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the torque of Cantrell's grinder because the feedstock was 25-70% liquid to the extent that optimizing torque was not a known result-effective variable. In response to Appellant's suggestion that Cantrell's feedstock is 25-70% water, the Examiner notes that Cantrell's volumetric reduction of 30-75% is compared to the "original volume" (see col. 9, lines 57-65 and col. 12, lines 20-30). Thus, the Examiner interprets the reduction to be comparing the post-expeller material to the initial material processed instead of comparing the post-expeller material to material entering the

expeller. Moreover, Cantrell's volumetric reduction of 30-75% does not specify that the de-bulking is solely due to water removed. Thus, the debulking would be due to rearranging the material to take up less space via converting to shard form (see col. 12, lines 5-11) rather than due to being 25-70% water. Thus, no minimum of water is required in Cantrell's garbage. Moreover, although Appellant's arguments with respect to minimal torque requirements when water is present have been considered, the arguments of counsel cannot take the place of evidence in the record. In response to Appellant's assertion that Cantrell does not address optimizing torque, the Examiner relies upon Cantrell's grinder being optimized for rated velocity and position, which would necessarily be an optimization of torque as recited above:

> However, in this regard, Cantrell further teaches that the grinder operates at a rated velocity depending upon the configuration of the machine used and that it rotates so that the work piece is ground to the desired shape, size, and finish (see col. 9, lines 27-35). Cantrell's teaching of optimizing the rated velocity and position, by definition, would be an optimization of the rotational force or torque via optimization of its components. Given that the velocity and material is ground properly, the torque would be a function of these variables. As such, Cantrell obvious recognizes that the grinder operating torque is a result-effective variable. Since the grinder operating torque would be a result-effective variable, one of ordinary skill in the art would have obviously determined the optimum grinder operating torque applied in the process of Cantrell through routine

experimentation based upon rated velocity and grinding to the desired shape, size, and finish (see col. 9, lines 27-35).

In Appellant's Arguments, section III, pages 14-16, Appellant argues that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the torque of Cantrell's grinder to Appellant's claimed range. The Examiner relies upon the motivation recited above that since the grinder operating torque would be a result-effective variable, one of ordinary skill in the art would have obviously determined the optimum grinder operating torque applied in the process of Cantrell through routine experimentation based upon rated velocity and grinding to the desired shape, size, and finish (see col. 9, lines 27-35).

In Appellant's Arguments, sections IV, pages 16-18, Appellant argues that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the operating speed range of Cantrell's grinder because the feedstock was 25-70% liquid to the extent that optimizing the operating speed range was not a known result-effective variable. As discussed above in response to Appellant's Arguments, section II, pages 12-14, regarding consequences of water in Cantrell:

In response to Appellant's suggestion that Cantrell's feedstock is 25-70% water, the Examiner notes that Cantrell's volumetric reduction of 30-75% is compared to the "original volume" (see col. 9, lines 57-65 and col. 12, lines 20-30). Thus, the Examiner interprets the reduction to be comparing the post-expeller material to the initial material processed instead of comparing the post-

expeller material to material entering the expeller. Moreover, Cantrell's volumetric reduction of 30-75% does not specify that the de-bulking is solely due to water removed. Thus, the debulking would be due to rearranging the material to take up less space via converting to shard form (see col. 12, lines 5-11) rather than due to being 25-70% water. Thus, no minimum of water is required in Cantrell's garbage. Moreover, although Appellant's arguments with respect to minimal torque requirements when water is present have been considered, the arguments of counsel cannot take the place of evidence in the record. In response to Appellant's assertion that Cantrell does not address optimizing torque, the Examiner relies upon Cantrell's grinder being optimized for rated velocity and position, which would necessarily be an optimization of torque as recited above:

As recited above, the Examiner relies upon optimization of the grinder operating speed being taught by Cantrell:

However, in this regard, Cantrell further teaches that the grinder operates at a rated velocity depending upon the configuration of the machine used and that it rotates so that the work piece is ground to the desired shape, size, and finish (see 9, lines 27-35). As such, Cantrell obvious recognizes that the grinder operating speed is a result-effective variable. Since the grinder operating speed would be a result-effective variable, one of ordinary skill in the art would have obviously determined the optimum grinder operating speed applied in the

process of Cantrell through routine experimentation based upon rated velocity and grinding to the desired shape, size, and finish (see col. 9, lines 27-35).

In Appellant's Arguments, section V, pages 18 and 19, Appellant argues that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the operating speed range of Cantrell's grinder to Appellant's claimed range. The Examiner relies upon the motivation recited above that since the grinder operating speed would be a result-effective variable, one of ordinary skill in the art would have obviously determined the optimum grinder operating speed applied in the process of Cantrell through routine experimentation based upon rated velocity and grinding to the desired shape, size, and finish (see col. 9, lines 27-35).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Patrick Butler/

Examiner, Art Unit 1742

/Christina Johnson/

Supervisory Patent Examiner, Art Unit 1742

Conferees:

Christina Johnson /caj/

/Christopher A. Fiorilla/

Chris Fiorilla

Supervisory Patent Examiner, Art Unit 1700